

1 NOSSAMAN LLP  
E. GEORGE JOSEPH (SBN 110797)  
2 gjoseph@nossaman.com  
BENJAMIN Z. RUBIN (SBN 249630)  
3 brubin@nossaman.com  
18101 Von Karman Avenue, Suite 1800  
4 Irvine, CA 92612  
Telephone: 949.833.7800  
5 Facsimile: 949.833.7878

6 Attorneys for Defendants  
FOOTHILL/EASTERN TRANSPORTATION  
7 CORRIDOR AGENCY, SAN JOAQUIN HILLS  
TRANSPORTATION CORRIDOR AGENCY;  
8 RHONDA REARDON; MICHAEL KRAMAN; CRAIG  
YOUNG; SCOTT SCHOEFFEL; AND ROSS CHUN  
9

10  
11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION  
13

14 PENNY DAVIDI BORSUK, a natural  
person; on behalf of herself and all others  
15 similarly situated,

16 Plaintiff,

17 vs.

18 THE TRANSPORTATION CORRIDOR  
AGENCIES, a government agency d/b/a/  
19 “The Toll Roads”;  
FOOTHILL/EASTERN  
20 TRANSPORTATION CORRIDOR  
AGENCY, a government agency; SAN  
21 JOAQUIN HILLS TRANSPORTATION  
CORRIDOR AGENCY, a government  
22 agency; RHONDA REARDON, a  
natural person; MICHAEL KRAMAN, a  
23 natural person; CRAIG YOUNG, a  
natural person; SCOTT SCHOEFFEL, a  
24 natural person; ROSS CHUN, a natural  
person; ORANGE COUNTY  
25 TRANSPORTATION AUTHORITY, a  
GOVERNMENTAL agency; DARRELL  
26 JOHNSON, a natural person; and DOES  
1-250, inclusive,  
27

28 Defendants.

Case No: 8:16-cv-262

**NOTICE OF REMOVAL OF  
ACTION UNDER 28 U.S.C.  
§ 1441(a) (FEDERAL QUESTION)**  
(Orange County Superior Court Case  
No. 30-2015-00812981)

**TO THE CLERK OF THE ABOVE-ENTITLED COURT, PLAINTIFF AND  
HER ATTORNEY OF RECORD:**

PLEASE TAKE NOTICE THAT Defendants Foothill/Eastern Transportation Corridor Agency, San Joaquin Hills Transportation Corridor Agency, Rhonda Reardon, Michael Kraman, Craig Young, Scott Schoeffel, and Ross Chun (collectively, "TCA Defendants"), hereby remove the above-captioned civil action from the Superior Court of California, County of Orange, to the United States District Court for the Central District of California. Removal is made under 28 U.S.C. § 1441 based on the following grounds:

1. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1441(a) and 1446, as set forth more fully below.

2. TCA Defendants are informed and believe that on October 2, 2015, an action was commenced by Plaintiff Penny Davidi Borsuk ("Plaintiff") in the Superior Court of the State of California, County of Orange, bearing Case No. 30-2015-00812981-CU-BT-CXC.

3. Defendants Foothill/Eastern Transportation Corridor Agency and San Joaquin Hills Transportation Corridor Agency (the "Corridor Agencies") are two joint power authorities formed by the California legislature in 1986 to plan, finance, construct, and operate a public toll road system in Orange County, California. The Corridor Agencies are named as defendants in the above-captioned case.

4. TCA Defendants received a copy of the Summons and Complaint on January 5, 2016 along with a Notice and Acknowledgement. TCA Defendants signed and returned the Notice and Acknowledgement on January 15, 2016. Service of a summons is "deemed complete on the date a written acknowledgement of receipt of summons is executed." Cal. Code Civ. Proc. § 415.30(c) (West 2015). Thus, January 15, 2016 operates as the date of service of this action on TCA Defendants. *Luchetti v. Hershey Co.*, No. 08-1629, 2008 WL

1 2331965, at \*3-4 (N.D. Cal. 2008) (after noting that service of process is  
2 “measured from the service date according to state law,” the court concluded that  
3 defendant’s execution of the Notice and Acknowledgement completed plaintiff’s  
4 service of process under California Code of Civil Procedure section 415.30, which  
5 triggered defendant’s 30-day period to file a notice of removal).

6 5. Plaintiff’s Complaint was the first pleading containing a removable  
7 claim received by TCA Defendants.

8 6. This notice of removal is timely filed within 30 days after the date of  
9 service of the Summons and Complaint in this action. 28 U.S.C. § 1446(b).

10 7. The other named defendants in this case are as follows:

- 11 a. The Transportation Corridor Agencies;
- 12 b. Orange County Transportation Authority; and
- 13 c. Darrell Johnson.

14 8. TCA Defendants are informed and believe that Orange County  
15 Transportation Authority and Darrell Johnson have not been served with the  
16 Summons and Complaint, and therefore are not required to consent to or join in  
17 this removal pursuant to 28 U.S.C. § 1446(a)(2)(A). Furthermore, TCA  
18 Defendants are informed and believe that to date, no DOE defendants have been  
19 substituted into the action or served with the Complaint. Finally, while the  
20 Transportation Corridor Agencies is separately named and identified as a  
21 defendant in the Complaint, this entity does not actually exist. Rather, it is merely  
22 a common means of referring to the Corridor Agencies. Thus, as the  
23 Transportation Corridor Agencies does not exist, and therefore cannot and has not  
24 been served, its consent to or joinder in this removal is not required.

25 9. “[A]ny civil action brought in a State court of which the district courts  
26 of the United States have original jurisdiction, may be removed by the defendant or  
27 the defendants, to the district court of the United States . . .” 28 U.S.C. § 1441(a).  
28 Therefore, a defendant is entitled to remove an action if the plaintiff could have

1 brought the action in federal district court originally as an action “arising under the  
2 Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.

3       10. Removal of this case is appropriate under 28 U.S.C. § 1441(a),  
4 because Plaintiff has alleged that the civil penalty scheme set forth in California  
5 Vehicle Code sections 40250 et seq. on its face and/or as applied by TCA  
6 Defendants violates the due process clause of the Fourteenth Amendment to the  
7 U.S. Constitution. Plaintiff further alleges that the fines imposed by TCA  
8 Defendants violate the excessive fines clauses of the Eighth and Fourteenth  
9 Amendments to the U.S. Constitution. Thus, this suit is properly removed as it is a  
10 civil action “arising under the Constitution, law or treaties of the United States.”  
11 28 U.S.C. § 1331. Plaintiff’s state law claims are all transactionally related to the  
12 federal claims and therefore subject to this Court’s supplemental jurisdiction under  
13 28 U.S.C. § 1367(a).

14       11. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1441(a) and  
15 1446(a) because the United States District Court for the Central District of  
16 California is the federal judicial district embracing the Superior Court of  
17 California, County of Orange where the state court action was originally filed.

18       12. Pursuant to 28 U.S.C. § 1446(d), TCA Defendants will promptly  
19 provide written notice of removal to Plaintiff and will promptly file a copy of this  
20 Notice of Removal with the clerk of the Superior Court of the State of California in  
21 and for the County of Orange.

22 ///

23 ///

24 ///

1           13. Pursuant to 28 U.S.C. § 1446(a), attached to this Notice as Exhibits A  
2 through O are true and correct copies of all documents that have been filed with the  
3 Court and served on TCA Defendants in this action as of the date of removal.  
4

5 Dated: February 16, 2016

NOSSAMAN LLP  
E. GEORGE JOSEPH  
BENJAMIN Z. RUBIN

6  
7  
8 By:           /s/ Benjamin Z. Rubin            
9 Benjamin Z. Rubin

10 Attorneys for Defendants  
11 FOOTHILL/EASTERN  
12 TRANSPORTATION CORRIDOR  
13 AGENCY, SAN JOAQUIN HILLS  
14 TRANSPORTATION CORRIDOR  
15 AGENCY; RHONDA REARDON;  
16 MICHAEL KRAMAN; CRAIG YOUNG;  
17 SCOTT SCHOEFFEL; AND ROSS CHUN  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28